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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,395	02/18/2004	John H. Gillen	1-15972	1873
1678 7590 01/08/2007 MARSHALL & MELHORN FOUR SEAGATE, EIGHT FLOOR TOLEDO, OH 43604			EXAMINER REDMAN, JERRY E	
			ART UNIT	PAPER NUMBER
			3634	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/781,395

Applicant(s)

GILLEN, JOHN H.

Examiner

Jerry Redman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) 1-11 and 14-16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 12-13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Newly submitted claims 14-16 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 14-16 do not read on the elected invention dated 3/24/2006 for the same reasons as discussed in detail in the Examiner's office action dated 6/9/2006.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-11 and 14-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

A proper response to this final office action must include the cancellation of non-elected claims (claims 1-11 and 14-16).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gier (5,694,717). Gier ('717) discloses a slider panel assembly comprising a slider panel (1) having at least one horizontal slider panel edge (all panels have an edge), a driver receiver (4) including at least two receiver stops with surfaces/bumpers (column 3, lines

16-32), and the driver receiver (4) disposed on the slider panel (1) and parallel to the horizontal slider panel edge.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patent to Simson et al. disclose a slider drive assembly similar to that of the applicant's invention.

The applicant's arguments have been considered but are not deemed persuasive.

Firstly, the Examiner disagrees with the applicant's response of the summary of the interview statement dated 8/9/2006. The Examiner did not state that there was 1/16" of an inch difference between the driver and contact receiver. The Examiner stated that there was a "slight difference" in width between the two and at most, maybe a 1/16" of an inch difference. As the applicant has discussed on page 6, lines 15-16, "This contact allows for substantial misalignment"; hence, the use of the word "tolerances" in response dated 8/9/2006 to the interview summary discussions dated on June 21, 2006 and July 12, 2006. Although the word "tolerances" was used by the Examiner, the applicant's specification (page 6, lines 20-25) clearly define the need for "tolerances" between the two surfaces based on wear, temperature, and moisture. Furthermore, the applicant relies on language such as "brought into non-attached pushing or pulling mechanical contact". This is in reference to the two surfaces NOT rigidly attached to one another (page 6, line 8 of the applicant's specification).

Secondly, the applicant's amendments and arguments are directed to language, which fails to positively recite limitations. For example, the phraseology "wherein the slider panel is capable of horizontally opening and closing a window aperture in a vehicle backlite" is intended use and the drive assembly of Gier ('717) is capable of being used on a vehicle having a backlite.

Thirdly, the applicant appears to limit the phraseology of "bumpers" in the arguments but fails to provide any such limitation to the claims and therefore, the Examiner is reading the applicant's claims in their broadest interpretation.

Lastly, the applicant argues the direction "horizontally" which is relative until the applicant relates the direction to a positive limitation that actually limits the panel in a "true" horizontal direction. Still furthermore, the applicant relies on this direction in relation to a vehicle backlite, which is considered intended use as discussed in detail above.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 571-272-6835.



Jerry Redman
Primary Examiner